

Iowa Department of Natural Resources
Natural Resource Commission

ITEM

12

DECISION

TOPIC Adopted and Final – Chapter 13 – Permits and Easements for Construction and Other Activities on Public Lands and Waters

The Commission is requested to approve the attached Adopted and Final Chapter 13, “Permits and Easements for Construction and Other Activities on Public Lands and Waters.” Chapter 13 regulates construction activities that occur on state owned and managed lands and waters pursuant to the authority described by Iowa Code section 461A.4.

The proposed amendment rescinds the existing chapter and adopts a new one. The new rules clarify the process that the Department of Natural Resources will utilize in evaluating applications for construction permits, easements and leases; describe standards and criteria that must be met to receive a construction permit, easement or lease; establish definitions of sovereign waters; define inspection procedures; impose civil penalties, as allowed by the Iowa Code, for failure to comply with the rules; and amend the appeals process for applications that are denied according to the standards and criteria.

A Notice of Intended Action was published in the Iowa Administrative Bulletin on December 17, 2008 as ARC 7416B. Comments were accepted through January 9, 2009. In addition, the Department held a public hearing utilizing the Iowa Communications Network (ICN) at seven locations throughout the state. The Department received nine comments, all supporting the rule change and one seeking clarification about the impacts to existing permits.

Other than a few grammatical and word changes made with the Administrative Code Editor, some minor changes were made from the Notice of Intended Action based on additional Department review. First, the Department clarified that management practices conducted by the state on its owned and managed lands are not subject to the restrictions described in this rule. Second, the Department added Pickeral Lake to Clay County under the definition of “meandered sovereign lakes,” as Pickeral Lake spans both Buena Vista and Clay counties. Third, the Department modified the relief available to unsuccessful applicants, which conforms with Iowa Code chapter 17A. Finally, the Department removed an ambiguous clause in the penalty section.

Diane Ford-Shivvers, Deputy Division Administrator
Conservation and Recreation Division
February 12, 2009

Attachment: Adopted and Final: Chapter 13, Permits and Easements for Construction and Other Activities on Public Lands and Waters

NATURAL RESOURCE COMMISSION[571]

Adopted and Final

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to rescind Chapter 13, “Permits and Easements for Construction and Other Activities on Public Lands and Waters,” and adopt new Chapter 13, “Permits and Easements for Construction and Related Activities on Public Lands and Waters,” Iowa Administrative Code.

The proposed amendment rescinds the existing chapter and adopts a new one. The new rules clarify the process that the Department of Natural Resources will utilize in evaluating applications for construction permits, easements and leases; describe standards and criteria that must be met to receive a construction permit, easement or lease; establish definitions of sovereign waters; define inspection procedures; impose civil penalties, as allowed by the Iowa Code, for failure to comply with the rules; and amend the appeals process for applications that are denied according to the standards and criteria.

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This amendment is intended to implement Iowa Code sections 461A.4, 461A.5A, 461A.5B, 461A.6, 461A.18, 461A.25 and 462A.3.

The following amendment is adopted.

Rescind 571—Chapter 13 and adopt the following new chapter in lieu thereof:

CHAPTER 13

PERMITS AND EASEMENTS FOR CONSTRUCTION AND RELATED ACTIVITIES ON PUBLIC LANDS AND WATERS

571—13.1(455A,461A,462A) Purpose. The commission holds lands and waters under its jurisdiction in public trust and protects the interests of all citizens in these lands and waters. These rules establish procedures and regulate the evaluation and issuance of permits for construction or other related activities that alter the physical characteristics of public lands and waters under the jurisdiction of the commission, including those activities that occur over or under such lands and waters. However, these rules shall not apply to activities accomplished by the Department and its agents that would only temporarily alter the characteristics of public land and would be considered management practices.

These rules also establish procedures for issuance of easements to public utilities and political subdivisions for activities that are determined to have a permanent effect on use and enjoyment of public lands and waters under the jurisdiction of the commission.

571—13.2(455A,461A,462A) Affected lands and waters. These rules are applicable to all fee title lands and waters, dedicated lands and waters under the jurisdiction of the commission and managed by the commission for public access to a meandered sovereign lake or meandered sovereign river; meandered sovereign lakes; meandered sovereign rivers; and sovereign islands; except those portions of the Iowa River and the Mississippi River where title has been conveyed to charter cities.

571—13.3(455A,461A) Definitions. For the purposes of this chapter, the following definitions shall apply:

“Applicant” means the person who applies for a permit or easement pursuant to these rules.

“Authorized agent” means a person, designated by the applicant, who shall be responsible to perform part or all of the proposed activity and who certifies the application according to subrule 13.9(2).

“Canal” means a narrow strip of water, artificially made, between two water bodies described in rule 571—13.2(455A,461A,462A).

“Cantilever access structure” means a structure constructed for improving the proximity of access to a lake or river, that has a support footing located entirely on littoral or riparian land above the ordinary high water line, and that extends from the footing and is completely suspended above the water at normal water elevation with no occupation of the lakebed or riverbed.

“Channel” means a narrow body of water that may be natural or artificially made.

“Charter cities” means the city of Wapello operating under special charter enacted in 1856; the city of Camanche operating under special charter enacted in 1857; the city of Davenport by chapter 84, Acts of the 47th General Assembly; the cities of Burlington, Clinton, Dubuque, Fort Madison, Keokuk, and Muscatine by chapter 249, Acts of the 51st General Assembly; and the city of Le Claire by chapter 383, Acts of the 58th General Assembly.

“Commercial boat ramp” means a boat ramp installed or maintained as part of a business to provide access to a public water body where use of the ramp is available to the general public.

“Commission” means the natural resource commission.

“Department” means the department of natural resources.

“Director” means the director of the department of natural resources or the director's designee.

“Easement” means an easement authorized under Iowa Code section 461A.25.

“Fee title lands and waters” means lands and waters for which title is acquired by deed or testamentary devise.

“Lease” means a lease authorized under Iowa Code section 461A.25.

“Littoral land” means land abutting a lake.

“Meandered sovereign lakes” means those lakes which, at the time of the original federal government surveys, were surveyed as navigable and important water bodies and were transferred to the states upon their admission to the union to be transferred or retained by the public in accordance with the laws of the respective states. The state of Iowa holds sovereign title in trust for the benefit of the public to the beds of the following lakes:

<u>County</u>	<u>Lake</u>
Allamakee	Kains

	Lansing Big Lake
	Mud Hen
	New Albin Big Lake
Buena Vista	Pickeral
	Storm
Calhoun	North Twin
	South Twin
	Tow Head
Cerro Gordo	Clear
Clay	Dan Green Slough
	Elk
	Mud
	Pickeral
	Round
	Trumbull
Delaware	Silver
Dickinson	Center
	Diamond
	East Okoboji
	Hottes
	Jemmerson Slough
	Little Spirit
	Lower Gar
	Marble
	Minnewashta
	Pleasant
	Prairie
	Silver
	Spirit
	Swan

	Upper Gar
	Welch
	West Okoboji
Emmet	Birge
	Cheerers
	East Swan
	Four Mile
	Grass
	High
	Ingham
	Iowa
	Ryan
	Tuttle
	Twelve Mile
	West Swan
Greene	Goose
Hamilton	Little Wall
Hancock	Crystal
	Eagle
	East Twin
	West Twin
Harrison	Nobles
Johnson	Swan
Kossuth	Burt
	Goose
Monona	Blue
Osceola	Iowa
	Rush
Palo Alto	Five Island
	Lost Island

	Rush
	Silver
	Virgin
Pocahontas	Clear
	Lizard
Pottawattamie	Carter
	Manawa
Sac	Black Hawk
Winnebago	Harmon
	Rice
Woodbury	Browns
Worth	Silver
Wright	Big Wall
	Cornelia
	Elm
	Morse

“Meandered sovereign rivers” means those rivers which, at the time of the original federal government surveys, were surveyed as navigable and important water bodies and were transferred to the states upon their admission to the union to be transferred or retained by the public in accordance with the laws of the respective states upon their admission to the union. The state of Iowa holds sovereign title in trust for the benefit of the public to the beds of the following rivers:

River and description

The Mississippi River from the south boundary of the state of Minnesota to the north boundary of the state of Missouri.

The Missouri River from the south boundary of the state of South Dakota to the north boundary of the state of Missouri.

The Big Sioux River from the south boundary of the state of Minnesota to the south boundary of the state of South Dakota.

The Des Moines River from the Mississippi River to the west line of Section 7, Township 89 North, Range 32 West, Palo Alto County (west branch) and to the north line of Section 2, Township 95 North, Range 29 North, Kossuth County (east branch).

The Cedar River from the Iowa River to the west line of Section 7, Township 89 North, Range 13 West, Black Hawk County.

The Iowa River from the Mississippi River to the west line of Section 7, Township 81 North, Range 11 West, Iowa County.

The Little Maquoketa River from the Mississippi River to the west line of Section 35, Township 90 North, Range 2 East, Dubuque County.

The Maquoketa River from the Mississippi River to the west line of Section 18, Township 84 North, Range 3 East, Jackson County.

The Nishnabotna River from the north boundary of the state of Missouri to the north line of Section 1, Township 67 North, Range 42 West, Fremont County.

The Raccoon River from the Des Moines River to the west line of Section 30, Township 78 North, Range 25 West, Polk County.

The Skunk River from the Mississippi River to the north line of Section 1, Township 73 North, Range 8 West, Jefferson County.

The Turkey River from the Mississippi River to the west line of Section 30, Township 95 North, Range 7 West, Fayette County.

The Upper Iowa River from the Mississippi River to the west line of Section 28, Township 100 North, Range 4 West, Allamakee County.

The Wapsipinicon River from the Mississippi River to the west line of Section 19, Township 86 North, Range 6 West, Linn County.

“Native stone riprap” means broken stone, dolomite, quartzite or field stone meeting Iowa department of transportation specification 4130, Class D.

“Ordinary high water line” means the boundary between meandered sovereign lakes and rivers, except the Mississippi River, and littoral or riparian property. “Ordinary high water line” is the limit where high water occupies the land so long and continuously as to wrest terrestrial vegetation from the soil or saturate the root zone and destroy its value for agricultural purposes. “Ordinary high water line” is the boundary between upland and wetland as defined by the U.S. Army Corps of Engineers Wetlands Delineation Manual dated January 1987. For Storm Lake and Clear Lake in Cerro Gordo County, the elevation has been established by adjudication. A list of elevations for the ordinary high water lines of meandered sovereign lakes, as determined by this definition and applicable court cases, is available on the department’s Web site.

“Ordinary high water line of the Mississippi River” means the elevation, as defined by criteria in the Code of Federal Regulations, 33 CFR Part 328.3 (November 13, 1986), promulgated by the U.S. Army Corps of Engineers, where the water exists at or below such elevation 75 percent of the time as shown by water stage records since construction of the locks and dams in the river.

“Permit” means a sovereign lands construction permit issued pursuant to this chapter.

“Permittee” means a person who receives a permit pursuant to these rules, which may also include the authorized agent if designated pursuant to these rules.

“Person” means the same as defined in Iowa Code section 4.1.

“*Public boat ramp*” means a boat ramp constructed to provide public access from public land to a water body.

“*Public lands*” means land under the jurisdiction of the commission that is owned by the state or that has been dedicated for public access to a meandered sovereign lake or meandered sovereign river.

“*Public waters*” means a water body under the jurisdiction of the commission that is owned by the state or that has been dedicated for public access to a meandered sovereign lake or meandered sovereign river.

“*Riparian land*” means land abutting a river.

“*Sovereign island*” means an island located within a sovereign meandered lake or a sovereign meandered river that was transferred to the state upon its admission to the union and whose title continues to be retained by the state.

“*Standard riprap*” means broken stone, dolomite, quartzite, field stone, or broken concrete meeting Iowa department of transportation specification 4130, Class D. Broken concrete shall not have reinforcing materials protruding from the surface of the riprap. Standard riprap shall not include petroleum-based materials.

DIVISION I PERMITS

571—13.4(455A,461A) Permits required.

13.4(1) *General.* No person shall temporarily or permanently place or build any structure or alter the characteristics of public lands or waters under the jurisdiction of or managed by the commission without a permit issued by the department prior to commencement of such activities as provided in the rules of this chapter.

13.4(2) *Hazardous conditions.* Trees, rock, brush or other natural materials located on sovereign or dedicated lands may be removed by persons without a permit issued pursuant to these rules only after the department, in its sole discretion, determines and evidences in writing that a hazard or other detrimental condition exists and that the proposed mitigative activity is appropriate. Such activity shall be limited only to the work required to address the immediate hazard or other detrimental condition. Any removal allowed by this rule shall conform to the requirements enumerated by the department regarding such removal, or the removal shall be deemed unauthorized action resulting in damage to state lands and waters. Persons proposing to remove hazards must contact a local department official and request an exception to a permit. The department official shall inspect the hazard and provide written authorization to proceed or shall require the person to apply for a permit.

13.4(3) *Impoundments.* These rules do not apply to river impoundments regulated by Iowa Code chapter 462A.

13.4(4) *Docks.* These rules do not apply to docks regulated by 571—Chapter 16, except as specifically described herein.

571—13.5(455A,461A) Interest in real estate. A permit shall be construed to do no more than give the permit holder a license to alter an area as specifically set forth in the permit. The permit creates no interest, personal or real, in the real estate covered by the permit.

571—13.6(455A,461A,462A) Evaluation.

13.6(1) In considering complete applications, the department shall evaluate the impact of the proposed activities on public use and enjoyment of public lands or waters, on the natural

resources in the areas within and surrounding the proposed activities, and the department's present and future intended management for the area against the applicant's identified and reasonable need to undertake the proposed activities and the viable alternatives that may exist with respect to the proposed activities.

13.6(2) In no event shall the department issue a permit for activities that:

a. May result in the taking, possession, transport, import, export, processing, selling, buying, transporting, or receiving any species of fish, plants or wildlife appearing on lists referenced in Iowa Code section 481B.5, unless the permittee meets one of the exemptions enumerated in rule 571—77.4(481B).

b. Have not received flood plain permits pursuant to Iowa Code chapter 455B and 567—Chapters 70 through 76, if applicable.

c. May impact littoral or riparian property owners without the express written permission of the littoral or riparian property owner.

d. Do not comply with the standards defined in 571—13.7(455A,461A,462A).

e. Interfere with department obligations or limitations related to federal funds or agreements or other restrictive covenants that may be applicable to the affected area.

f. Allow fill to be placed beyond the ordinary high water line of waters described in rule 571—13.2(455A,461A,462A) for purposes of regaining land lost due to erosion.

13.6(3) The department may withhold a permit when the applicant has not obtained all other required permits or licenses necessary to construct and operate the proposed activity.

571—13.7(455A,461A,462A) Review standards. Department staff shall conduct an environmental review of the application. The following standards shall apply to permits issued under the rules of this chapter:

13.7(1) *Uses of lands and waters.* Development of public lands and public waters permitted by these rules shall be limited to projects that meet all of the following criteria. The projects:

a. Are built to minimally impact the natural resources of public recreational use and navigation on such lands and waters. Specifically, applicants must demonstrate that the project accomplishes all of the following:

(1) Does not negatively impact water quality in or around the proposed permitted area.

(2) Minimizes erosion and sedimentation in or around the proposed area.

(3) Minimizes detrimental impacts to biological and botanical resources in or around the proposed area, including upland, wetland and sensitive areas and unique community structures.

(4) Complies with laws and regulations related to threatened and endangered species, through both federal and state programs.

b. Utilize the smallest amount of public lands and public waters.

c. Do not convert the public lands and public waters to an exclusive or private use.

d. Are the only viable method for conducting the activities, and no viable alternatives to constructing on public lands exist.

In completing the environmental review, different bureaus and staff members of the department will provide input based on law, professional judgment, data and accepted scientific theory.

13.7(2) *Shoreline erosion protection and retaining walls.* Shoreline erosion protection activities may be permitted if the activities are in compliance with 571—13.6(455A,461A,462A) and the following additional standards:

a. Shoreline erosion protection activities on meandered sovereign lakes shall be limited to placement of native stone riprap, extending to a maximum of 4 feet horizontally within or below

the ordinary high water line elevation contour line. Placement of earth fill within the ordinary high water line shall not be allowed. Retaining walls, sheet piling, gabions or other retaining structures shall be placed at or above the ordinary high water line. When such retaining structures are placed at the ordinary high water line, they must be faced with native stone riprap.

b. Shoreline erosion protection activities on meandered sovereign rivers, except the Mississippi River, shall be limited to placement of approved in-stream erosion control structures or native stone or standard riprap. Riprap shall extend riverward from the ordinary high water line at a slope of 2 feet horizontal to 1 foot vertical (2:1). Placement of earth fill within the ordinary high water line shall not be allowed. Retaining walls, sheet piling, gabions or other retaining structures shall not be placed within the ordinary high water line. When such retaining structures are placed at the ordinary high water line, they must be faced with riprap.

c. Shoreline erosion protection activities on the Mississippi River shall be limited to placement of approved in-stream erosion control structures or native stone riprap. Riprap shall extend riverward from the ordinary high water line at a slope of 2 feet horizontal to 1 foot vertical (2:1). Placement of earth fill within the ordinary high water line shall not be allowed. Retaining walls, sheet piling, gabions or other retaining structures shall not be placed within the ordinary high water line. When such retaining structures are placed at the ordinary high water line, they must be faced with native stone riprap.

d. Retaining walls on all meandered sovereign lakes and meandered sovereign rivers. The landowner shall maintain the wall system at all times and take corrective measures to eliminate any nuisance condition, repair deterioration of the structure, eliminate erosion around the structure, and repair damage to the structure caused by the action of the water or ice. When a retaining wall or other structure placed on the shoreline prevents the public from traversing the shoreline, the landowner shall grant the public a license to walk from the landowner's property within 15 feet of the top of the wall or structure for the purpose of traversing the shoreline.

e. Notwithstanding the prohibitions in this subrule, nothing in this subrule shall prohibit activities that would be part of habitat development or natural resources mitigation projects constructed or approved by a political subdivision of the state and subject to review under these rules.

13.7(3) *Quality of the applicant.* Applicants or authorized agents who have a current violation for another project are not eligible for consideration for a permit under these rules unless and until all other noncompliant projects have been remediated and any enforcement actions related to the same have been resolved or satisfied.

13.7(4) *Cantilever access structures.* Permanent cantilever access structures that lawfully exist and are lawfully permitted under prior sovereign lands construction permit rules as of [insert the effective date of these rules] shall be deemed lawfully permitted under these rules. All cantilever access structures that are not lawfully installed prior to [insert the effective date of these rules] or are installed after [insert the effective date of these rules] shall be regulated as docks by 571—Chapter 16.

13.7(5) *Beaches, canals and channels.* Permits may be granted to maintain existing beaches, canals and channels lawfully installed as of [insert the effective date of these rules] to ensure the navigation and safety of those existing lawful beaches, canals and channels. The department shall not permit new beaches, canals or artificial channels or expansion of existing beaches, canals or artificial channels, except that the department may permit new beaches, canals and artificial channels and expansions of existing beaches, canals, and artificial channels when such establishment or expansion would be under the jurisdiction of a political subdivision of the state,

would be accomplished to provide public access to the water, and would meet the review standards established by these rules.

13.7(6) *Stationary blinds.* All stationary blinds installed on lands and waters described in rule 571—13.2(455A,461A,462A) are subject to regulation by rule 571—51.6(481A) and are not subject to the requirements of these rules.

571—13.8(455A,461A) Leases or easements as a condition of permits. If a permitted structure or its use will have a continuing impact on the availability or desirability of public lands or public waters, the permit shall be conditioned on the requirement that the permittee obtain a lease or easement under Division II of this chapter. However, a lease or easement shall not be required for proposed activities that are wholly within the scope of the permittee's littoral or riparian rights.

571—13.9(455A,461A,462A) Permit application. Applicants shall apply for permits using an application form provided by the department. Applicants shall state the need for the proposed construction or use, the availability of alternatives, and the measures proposed to prevent, minimize or mitigate adverse impacts to natural resources or public use of the affected area. The department reserves the right to refuse to review incomplete applications. Each application, including all amendments, shall be signed by the applicant and authorized agent if one shall be so appointed by the applicant. The applicant's signature shall acknowledge that the application is accurate and made in good faith.

13.9(1) For purposes of this rule, the department will deem an application complete if the application meets all of the following criteria. The application:

- a. Is provided on the department's form, and all fields are completed and legible;
- b. Includes the name(s), mailing address and telephone number of the applicant(s) and authorized agent(s), if applicable;
- c. Describes the proposed activity, including:
 - (1) Physical address and legal description of the location where the proposed activity is to occur; a written description of existing natural and man-made structures and features; an aerial photograph, if possible or available; and a ground-level photograph(s) showing the area where the activity is proposed to occur;
 - (2) Schematic or design plans, including cross-sections and plan views, that accurately and clearly depict the proposed activities;
 - (3) Description of the construction methods used to complete the project, the methods used to transport material to the site, and the type and amount of material to be used;
 - (4) Description of measures proposed to prevent or minimize adverse impacts on the property in the proposed area;
 - (5) Description of any borrows or disposal sites, including the location of any borrows or disposal sites and the type and amount of material to be borrowed or disposed of in them;
- d. Includes identification of the ordinary high water line, if the proposed activities are in or near a meandered sovereign lake or meandered sovereign river;
- e. Describes alternative plans to undertake the activity that may be available to the applicant;
- f. Identifies the need for the proposed activity in the proposed project area;
- g. Provides a statement of consent for the department to enter the property during the term of the proposed permit.

13.9(2) For applications that provide for an authorized agent to perform part or all of the

proposed activities, the following additional information shall be required to constitute a complete application:

- a. Statement signed by authorized agent and applicant;
- b. Statement signed by the authorized agent acknowledging that the authorized agent is aware of such designation and is responsible to complete the identified work; and
- c. Description of the work to be completed by the authorized agent.

571—13.10(455A,461A) Additional information or analysis required for permit review.

13.10(1) The director may require applicants to provide additional information, at the applicant's sole cost, necessary to complete review of the application, including but not limited to study of alternatives to construction on public lands and waters, social and environmental impacts of the proposed activities, professional surveys to establish the social and environmental impacts of the proposed activities, professional land surveys to delineate or show real property boundaries and other characteristics, and a professional real estate appraisal of the value that a permit may convey.

13.10(2) If the applicant does not respond to a request for additional information within 90 days of such request being made by the department, the department may withdraw the application from consideration and the applicant must reapply for the permit.

13.10(3) When the director determines that the proposed activity will significantly affect the public interest, the director may hold a public meeting in the vicinity of the proposed activity. When a public meeting is held, the director shall consider public input in conjunction with other information collected or provided as part of the application review when acting on a permit application.

571—13.11(455A,461A) Permit issued or denied. The department shall promptly review all permit applications, and the director shall issue a permit or deny all or part of an application upon completion of review. A permit may include specified conditions denying the application in part and the reasons for the conditions. The denial of a permit may include a proposed removal order. A permit denial shall be the final agency action, unless the unsuccessful applicant otherwise has a constitutional right to a contested case, in which case an administrative appeal pursuant to procedures in 571 – Chapter 11 shall be available. The unsuccessful applicant's request for a contested case may include a request for a variance or waiver under the provisions of Iowa Code section 17A.9A and 571—Chapter 11. The decision of the presiding officer in a contested case shall constitute final agency action.

571—13.12(455A,461A) Authorized agent. When an authorized agent is designated on the application for a permit and acknowledges the same, that authorized agent shall be responsible in the same manner as the permittee to comply with the terms of the permit issued.

571—13.13(455A,461A) Inspection. The department may inspect the location during the term of the permit to ensure the permitted activities comply with the terms of the permit. The permittee shall grant the department the right to access the permitted activities for purposes of inspecting the permitted activities during the term of the permit. If the permittee denies permission for entry, the department may obtain an order from the Iowa district court for the county in which the permitted activities or the majority of the permitted activities occur, as needed to enable the department to carry out its inspection duty. The intent of the inspection is to

evaluate compliance with permit conditions and the impact to the natural resources and the public's recreational use of the area.

571—13.14(455A,461A) Additional information or analysis required during term of the permit. The director may require permittees to provide additional information, at the permittee's sole cost, necessary to ensure that the permittee is complying with the terms of the permit, including but not limited to social and environmental impacts of the activities, professional surveys to establish the social and environmental impacts of the activities, professional land surveys to delineate or show real property boundaries and other characteristics, and a professional real estate appraisal of the value that a permit may convey or has conveyed.

571—13.15(455A,461A) Unauthorized construction; citation; notice; proposed removal order.

13.15(1) Violations.

a. A person shall be in violation of these rules and Iowa Code section 461A.4 in the event the person does any of the following:

(1) Performs construction on or undertakes other activities that alter the physical characteristics of public lands or waters under the jurisdiction of or managed by the commission without a permit required by these rules;

(2) Performs such work out of conformance with specific requirements enumerated in a permit issued in accordance with these rules; or

(3) Fails to comply with an order of the commission under these rules.

b. Each day of a violation shall be considered a separate offense.

13.15(2) Types of enforcement actions. A person who violates these rules shall be subject to either of the following:

a. Criminal enforcement. A peace officer of the state may issue a citation for each offense. A person who is found guilty of violating these rules shall be charged with a simple misdemeanor for each violation.

b. Civil enforcement. A civil penalty may be assessed in conformance with Iowa Code section 461A.5B and rule 571—13.17(455A,461A). Written notice of the violation(s) shall be given to the person against whom disciplinary action is being considered. The notice shall state the informal and formal procedures available for determining the matter. If agreement as to appropriate disciplinary sanction, if any, can be reached between the person against whom disciplinary action is being considered and the director, a written stipulation and settlement between the department and the person shall be entered. Such a settlement shall take into account how the corrective actions described in subrule 13.15(3) shall be accomplished. In addition, the stipulation and settlement shall recite the basic facts and violations alleged, any facts brought forth by the person, and the reasons for the particular sanctions imposed. If an agreement as to appropriate disciplinary action, if any, cannot be reached, the director may issue an administrative order as described in rule 571—13.17(455A,461A).

13.15(3) Actions to be taken upon receipt of citation or notice of violation. A person who has violated these rules shall cease the specified unauthorized activity upon receipt of a citation or as may be stipulated in the notice of violation. The notice of violation or a written notice accompanying the citation from the department shall require the person to take one or more of the following actions within a specified time:

a. Apply for a permit to authorize completion of construction or maintenance and use, as

applicable;

b. Remove materials and restore the affected area to the condition that existed before commencement of the unauthorized activity;

c. Remediate the affected area in a manner and according to a plan approved by the department. The department may enforce such a remediation at the expense of the permittee, adjacent landowner or culpable party.

571—13.16(455A,461A) Removal orders. If the violation includes the unauthorized placement of materials or personal property on the public lands or public waters under the jurisdiction of the commission and the person, who may include a permittee or authorized agent but may not, fails to comply with the action required by the notice, the director may cause a proposed removal order to be issued to the person responsible for such placement. The proposed removal order shall specify the removal action required and include notice of the right to an administrative appeal including a contested case hearing under procedures in 571—Chapter 7. The proposed decision in a contested case may be appealed to the commission under 571—Chapter 7. If there is no appeal from a proposed decision that includes a removal requirement, the proposed decision shall be presented to the director for review and adoption. A removal order approved by the director shall constitute final agency action under Iowa Code sections 461A.4 and 461A.5A and may be enforced through an original action in equity filed in a district court of the state by the attorney general on behalf of the department and the commission.

571—13.17(455A,461A) Civil penalties. The department may assess a civil penalty of up to \$5,000 per offense for each violation of these rules, provided the department does not utilize a criminal citation for a violation. Each day the violation continues shall be a separate offense or violation. Penalties shall be assessed through issuance of an administrative order of the director which recites the facts and the legal requirements that have been violated and a general rationale for the prescribed fines. The order also may be combined with any other order authorized by statute for mandatory or prohibitory injunctive conditions and is subject to normal contested case and appellate review under procedures in 571—Chapter 7. The proposed decision in a contested case may be appealed to the commission under 571—Chapter 7. The commission may refer orders that include singular or cumulative penalties over \$10,000 to the attorney general's office.

571—13.18(455A,461A) Report of completion. Once an approved activity is completed, the permittee shall notify the department contact person identified in the permit of such completion through regular mail or E-mail. The permittee shall include with such notice a ground-level photograph(s) of the completed project. The activity shall be subject to final approval before the department determines that the conditions of the permit have been met.

571—13.19(455A,461A) Final inspection. Once the permittee notifies the department pursuant to rule 571—13.18(455A,461A), the department shall inspect the permitted area to ensure that the permittee has complied with the terms of the permit. Such inspection shall occur within 60 days of the department's receipt of the notice provided pursuant to rule 571—13.18(455A,461A). In the event the department does not provide final inspection within 60 days of the department's receipt of the notice provided pursuant to rule 571—13.18(455A,461A), the permittee shall be deemed compliant and the permit shall expire. The intent of this inspection is to evaluate compliance with permit conditions and the impacts to the natural resources and the

public's recreational use of the area.

571—13.20(455A,461A) Permit extensions. Prior to the expiration of a permit, a permittee or an authorized agent may submit an application to the department for an extension of the permit on a form provided by the department. In evaluating whether to grant the extension, the department will consider the work completed, the work to be performed, the extent to which the permit extension is needed and the extent to which the permittee has made efforts to meet the obligations of the original permit. The department reserves the right to modify the conditions of a permit as part of any extension. An extension granted by this rule is not a project modification.

571—13.21(455A,461A) Project modifications. If projects are modified to the extent that the additional or modified work would not be allowed within the original permit, the permittee must apply for a new permit for the additional or modified work.

571—13.22(455A,461A) Transferability. Permits are transferable only upon written approval of the department and only after the department is satisfied that the permitted activities will not change and the new permittee would be eligible to receive a permit under subrule 13.7(3).

571—13.23 to 13.50 Reserved.

DIVISION II LEASES AND EASEMENTS

571—13.51(455A,461A) Leases. Where a permitted structure or related activity will have a continuing impact on the availability or desirability of public lands or public waters or exceeds the scope of littoral or riparian rights, the permittee must enter into a lease covering the area affected by the construction. Fees for leases shall be determined by 571—Chapter 18 or other methods approved by the commission and executed pursuant to Iowa Code section 461A.25. Requests for leases shall be made on the form and shall include the information required by rule 571—13.9(455A,461A,462A) under Division I of this chapter. The department may grant a lease if, in the department's sole discretion, the lease will not impair the state's intended use of the area during the term of the lease; the lease will not negatively impact a federal interest, including related deed restrictions, related to the area during the term of the lease; and the lease will not result in an exclusive use.

571—13.52(455A,461A) Easements. The director may grant an easement to political subdivisions and utility companies pursuant to Iowa Code section 461A.25, provided the following terms are met:

13.52(1) Requests for easements shall be made on the form and shall include the information required by rule 571—13.9(455A,461A,462A) under Division I of this chapter. The department may grant an easement if, in the department's sole discretion, the easement will not impair the state's intended use of the area during the term of the easement or the easement will not negatively impact a federal interest, including related deed restrictions, related to the area during the term of the agreement.

13.52(2) The value of an easement shall be determined by the director based upon a real estate appraisal or other method approved by the commission, as evidenced in the meeting minutes thereof. In addition to fees for easements, the director may assess the applicant for the reasonable transaction costs associated with the issuing of an easement including the cost of

appraisals, other methods of establishing values, and land surveys. In determining the fee for an easement, the department may consider the value the proposed activity may contribute to the department's management of the affected property.

13.52(3) Recipients of any easements granted pursuant to this rule shall assume liability for structures installed pursuant to such easement and shall comply with the standards enumerated in rule 571—13.7(455A,461A,462A), as applicable, in the sole discretion of the department.

571—13.53(455A,461A) Appeals. The department and the commission are under no legal obligation to provide any person a legal interest in property under the jurisdiction of the commission. An applicant may appeal to the director a decision of the department regarding leases and easements and request that the director reconsider a condition of an easement or a lease or a denial of an easement or a lease. The determination of the director shall be final agency action.

These rules are intended to implement Iowa Code sections 455A.5, 461A.4, 461A.5A, 461A.5B, 461A.6, 461A.18, 461A.25 and 462A.3.

Date

Richard A. Leopold, Director

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